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TAGS: [ECON](#) [ETRD](#) [PGOV](#) [SCUL](#) [SOCI](#) [CH](#)  
SUBJECT: INDIGENOUS INNOVATION - DEMARCHE DELIVERED AGAIN,  
MFA BELIEVES POLICIES NON-DISCRIMINATORY

REF: A. SECSTATE 124680  
[1](#)B. BEIJING 3296

[1](#)1. (SBU) Summary. Economic Minister Counselor delivered reftel demarche regarding indigenous innovation to a National Development and Reform Commission (NDRC) official December 9. The official took note of USG concerns over the Circular and promised to "respond accordingly." Separately, a Ministry of Foreign Affairs (MFA) spokesperson on December 14 asserted China's indigenous innovation policies "comply with relevant WTO rules" and "treat both domestic and foreign-invested enterprises equally." The spokeswoman did not address industry concerns over the requirement that intellectual property in indigenous innovation products be developed locally. The MFA comments, however, have not been published and appeared to be a preliminary response only and thus may not be the Chinese government's final position on this issue.  
End Summary.

[1](#)2. (SBU) Economic Minister Counselor William Weinstein delivered the demarche concerning the Circular on the 2009 National Indigenous Innovation Product Accreditation Work (Circular) to NDRC Counselor Qi Chengyuan December 11. EMIN emphasized the Circular undermined clear commitments made by the Chinese during both the Joint Commission on Commerce and Trade (JCCT) and the Strategic and Economic Dialogue (S&ED) to treat products of Foreign Invested Enterprises operating in China the same as domestic products. He stressed that the Circular discriminated against foreign companies and therefore also violates the fundamental principle of non-discrimination that is the cornerstone of the rules-based international trading system. EMIN further noted that industry and foreign governments were not given an opportunity to comment on the Circular before it was promulgated, raising transparency concerns that are fundamental in ensuring non-discriminatory treatment of foreign companies and goods. (Note: Ref b reports other channels through which this same demarche was delivered).

[1](#)3. (SBU) NDRC's Qi acknowledged USG concerns and several times asked for clarification. Qi said the NDRC would analyze these concerns, discuss them with the relevant ministries, in particular with the Ministry of Science and Technology, and "respond accordingly."

14. (SBU) Separately, on December 14, MFA spokeswoman Jiang Yu, in an unpublished oral response to a press inquiry on the Circular, stated China's indigenous innovation policies accord with "international rules," and "comply with relevant WTO rules." Jiang further stated China's "indigenous innovation product accreditation work treats both domestic and foreign-invested enterprises equally without discrimination." "All eligible products can be accredited, and all types of enterprises are treated equally," according to Jiang.

15. (SBU) Comment. In her comments, Jiang did not address specific industry concerns over requirements that local intellectual property be developed and IP rights originate in China in order to qualify as "indigenous innovation." These latter stipulations effectively exclude foreign-invested enterprises from participation in the indigenous innovation accreditation process given well-known IPR concerns in China that dissuade FIEs from innovating in China, and leaving them unable to benefit from the preferential incentives in government procurement under the accreditation process. The fact that Jiang's response has yet to be published on the MFA or other official website suggests a final PRC position still has not been issued. The Embassy will meet with the Ministry of Science and Technology December 18 in a continued effort to get USG and industry concerns over the Circular addressed.  
End Comment.

GOLDBERG